



Appeal Decision

Site Visit made on 28 February 2023

by Debbie Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 09 March 2023

Appeal Ref: APP/F5540/X/21/3288514

28 Addison Avenue, Hounslow TW3 4AP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr N Khokhar against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00005/28/LAW1, dated 30 April 2021, was refused by notice dated 24 June 2021.
 - The application was made under section 192(1)(b) of the 1990 Act 1990 as amended.
 - The development for which an LDC is sought is "detached outbuilding to rear to be used as home gym, home working office, sauna room and garden tools store".
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Preliminary Matter

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.

Background and Main Issue

3. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired). The application sought confirmation that the proposed development would fall within that 'permitted' under Article 3(1) and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings incidental to the enjoyment of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development subject to conditions and limitations.*

4. Condition E.4 of Schedule 2, Part 1, Class E of the GPDO says that *for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.*
5. The Technical Guidance¹ summarises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
6. I must decide whether the proposed development would have been lawful on the date of the application. The dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

7. The building would be sited in the rear garden. It would measure 6.76 metres (m) by 5.0 m, giving a floor area of 33.8 square metres. The plan (Drawing No 2021/28/AGH/110/OB) indicates that the building would contain one main room to be used as a home working area/home gym and multi gym, with access to a separate sauna room and WC, and would include a garden tool store with its own external door. The Council has a particular issue with the WC as it is considered this would amount to primary living accommodation.
8. Case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse, as such, not to use for a purpose integral to the use as a dwellinghouse. An incidental use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a building is required for an incidental purpose will depend on a fact and degree assessment. The carrying out of some hobby and/or working from home may be incidental, but it is always vital that there is a normal functional relationship between the incidental and the residential use. The keynote is reasonableness.
9. The Court in *Emin*² confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the

¹ Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.

10. Having regard to the above, I consider that an outbuilding serving a purpose as a home gym/office could be considered incidental to the enjoyment of the dwellinghouse. A sauna is less common but would not necessarily be unreasonable. Similarly, a storeroom for garden tools and/or personal belongings could be considered an incidental use of an outbuilding. In such circumstances it would be appropriate to include a WC as this would be convenient for the users of the outbuilding. However, such uses should also remain subordinate.
11. In this case, the proposed development is a relatively large building of substantial construction. The plans indicate that the building would accommodate an office alongside space for a range of training facilities that could be used contemporaneously. There is no information about how the appellant envisages the facilities would be used nor why the gym needs to be of the size proposed. Nonetheless, a home gym may well accommodate small pieces of equipment, such as a running machine and/or a cycle 'turbo', in addition to a bench press and free weights area. It would not be unreasonable for such equipment to sit alongside a desk and space for office storage. The proposed sauna is of a size that would equate with personal use and the garden store could function in the same way as a garden shed. While the WC could be considered to be primary accommodation, in this context it is reasonable to provide a facility in association with the incidental use of the outbuilding.
12. It is not necessary for the appellant to demonstrate a requirement for the outbuilding, however, it must be shown to be genuinely required for a purpose incidental to the enjoyment of the dwellinghouse as such. Although the information is limited, the size and layout is appropriate and reasonable for the intended use. That use being one that is normally found and having a functional relationship with the residential use. Overall, I am satisfied that there is justification for an additional building of the size and layout proposed, and for the purposes described.

Conclusion

13. The totality of the evidence presented in support of the appellant's claim shows that, on the balance of probabilities, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3(1) and Schedule 2, Part 1, Class E to the GPDO.
14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of detached outbuilding to rear to be used as home gym, home working office, sauna room and garden tools store was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

'Debbie Moore

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 30 April 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probabilities, the proposed outbuilding would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3(1) and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Debbie Moore

Inspector

Date: 09 March 2023

Reference: APP/F5540/X/21/3288514

First Schedule

Detached outbuilding to rear to be used as home gym, home working office, sauna room and garden tools store

Second Schedule

Land at 28 Addison Avenue, Hounslow TW3 4AP

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 09 March 2023

by Debbie Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

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Scale: NTS

